

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

TERRY DAUM,

Plaintiff,

-v-

9:15-CV-1083
(DNH/DJS)

CAPT. STEVEN RACETTE, Superintendent;
STEVEN BROWN, Deputy Superintendent of
Security; DELVIN, Captain; SNOW, Lieutenant;
SERGEANT CROSS; C. STICKNEY, Correction
Officer; JOHN DOES; and BULLIS,

Defendants.

APPEARANCES:

TERRY DAUM
Plaintiff pro se
97-A-1295
Great Meadow Correctional Facility
Box 51
Comstock, New York 12821

HON. LETITIA JAMES
Attorney General for the State of New York
Attorney for Defendant
The Capitol
Albany, NY 12224

MARK G. MITCHELL, ESQ.
Ass't Attorney General

DAVID N. HURD
United States District Judge

DECISION and ORDER

Pro se plaintiff Terry Daum brought this civil rights action pursuant to 42 U.S.C.

§ 1983. On November 5, 2018, the Honorable Daniel J. Stewart, United States Magistrate

Judge, advised by Report-Recommendation that defendants' motion for summary judgment be granted in part and denied in part. Plaintiff timely filed objections to the Report-Recommendation.

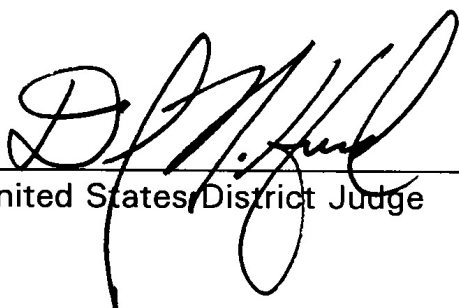
Based upon a de novo review of the portions of the Report-Recommendation to which plaintiff objected, the Report-Recommendation is accepted and adopted in all respects. See 28 U.S.C. § 636(b)(1).

Therefore, it is

ORDERED that

1. Defendants' motion for summary judgment is GRANTED in part and DENIED in part;
2. Defendants' motion for summary judgment is GRANTED as to plaintiff's claims against defendants Bullis, Snow, Brown, and Racette and those defendants are DISMISSED;
3. All claims against the "John Doe" defendants are DISMISSED WITHOUT PREJUDICE;
4. Defendants' motion for summary judgment is DENIED in all other respects and the following claims remain for trial: (1) plaintiff's Eighth Amendment claims against defendant Stickney for excessive force, and against defendants Devlin and Cross for failure to intervene; and (2) plaintiff's retaliation claims against defendants Stickney, Devlin, and Cross;
5. Trial in this matter is scheduled for August 6, 2019, in Utica, New York with pre-trial submissions due at noon on or before July 23, 2019; and
6. Plaintiff's previous request for the appointment of pro bono trial counsel is considered renewed and is GRANTED and that assignment will be made.

IT IS SO ORDERED.



United States District Judge

Dated: February 12, 2019
Utica, New York.